IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9525 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESHSING S CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR CB DASTOOR for Petitioner

MR KC SHAH, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 20/10/2000

ORAL JUDGEMENT

#. The detention order dated July 13, 2000 passed by the District Magistrate, Palanpur under Prevention of Anti Social Activities Act (for short, PASA) is under challenge in this petition. It appears from the grounds of detention that the order of detention was passed

against the petitioner because, he is a bootlegger and his anti-social activities and activities concerning bootlegging created situation prejudicial for maintenance of public order. For passing this order, the Detaining Authority has relied upon two cases under the Prohibition Act, registered against the petitioner and also upon two statements of two witnesses, who deposed before the Sponsoring Authority against the petitioner's activities giving apprehension of breach of public order. On these materials impugned order was passed, which has been challenged in this petition, in the course of arguments, on the following grounds:

1. That the impugned order is illegal because the activities of the petitioner can not be said to be prejudicial for maintenance of public order;
2. The representation of the petitioner has not been decided so far;
3. That the privilege claimed by the Detaining Authority is illegal, in as much as, he did not personally verify the genuineness of the statements of two witnesses who furnished materials against the petitioner; and
4. That the impugned order has been passed without application of mind, because on the facts and circumstances of the case, provisions of secs.56 and 57 of the Bombay Police Act are not attracted.

#. Having heard the learned counsel for the petitioner and Shri KC Shah, learned AGP, I find that there is no force in the contention that the representation of the petitioner has not been decided. Shri KC Shah informs that the petitioner's representation was received on September 5, 2000 and was rejected on September 7, 2000. Consequently, on this ground, detention order can not be quashed. So far as remaining three grounds are concerned, I find force in them. However, if the detention order can be quashed, even on one ground, there is no necessity to discuss the remaining grounds. However, since all the grounds have been urged by the learned counsel for the petitioner, it is expedient to discuss those grounds.

#. There is no disclosure in the grounds of detention that the petitioner was convicted in three cases. What is disclosed is that, only two offences under Bombay Prohibition Act have been registered against the petitioner. As such, the Detaining Authority has wrongly taken the view that the alternative remedy under sec.57

would be of no help. It shows non-application of mind to the material on record, as well as, to the law applicable on the subject, which renders the impugned order illegal and invalid.

#. The Detaining Authority has claimed privilege under sec.9(2) of the Act. However, he did not personally satisfy himself that the witnesses really gave the statements, which were produced before him for passing the detention order. On the other hand, by process of induction, verification was done by the Deputy Superintendent of Police, and on the strength of verification made by the Deputy Superintendent of Police, the Detaining Authority claimed the privilege. This action shows that the impugned order was passed mechanically without the Detaining Authority being really satisfied that the statements given by the witnesses against the petitioner were true and genuine; and that, there existed real apprehension in the mind of the witnesses that, in case their names and addresses are disclosed, they will apprehend danger from the petitioner.

#. Coming to the last contention, even cursory examination of the grounds of detention will reveal that the petitioner did not create any situation prejudicial for maintenance of public order, when huge quantity of foreign liquor was recovered from him on two occasions, for which two cases were registered against him. As such, these two incidents could not furnish ground to the Detaining Authority for reaching satisfaction that the activities of the petitioner were prejudicial for maintenance of public order on these two occasions.

#. So far as the statements of two witnesses are concerned, no doubt their names are not disclosed on the pretext of privilege under sec.9(2) of the Act, yet if the translation of the grounds of detention is correctly submitted, it can safely be said that even the Detaining Authority did not come to conclusion, from the statements of these witnesses, that the activities of the petitioner on two occasions were prejudicial for maintenance of public order. The Detaining Authority could have, while claiming privilege under sec.9(2) of the Act, withheld the names and addresses of the witnesses, but this did not permit him, not to even remotely disclose in the grounds of detention the dates and time on which two incidents occurred, about which the two witnesses gave statements against the petitioner. After examining the extracts of the statements of these two witnesses, as contained in the grounds of the detention, it can be said

that no reasonable man would come to conclusion that the activities of the petitioner on these two occasions were such, which were prejudicial for maintenance of public order.

#. A bootlegger can be detained under the Act only when his activities are prejudicial for maintenance of public order. He can not be detained under the preventive detention law simply because the police apprehends that it is incapable of dealing with the petitioner against his illegal bootlegging activities under the ordinary law.

#. For the reasons stated above, the impugned order is patently illegal, hence it can not be sustained. The petition, therefore, succeeds and is hereby allowed. The impugned order is set-aside. The petitioner shall be released forthwith, unless wanted in some other case.

October 20, 2000 [D.C. Srivastava, J.]

/sakkaf